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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 234

UNITED STATES OF AMERICA, PETITIONER

v.

LULA HICKEY THOMAS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled case on May 14, 1951.

OPINIONS BELOW

The memorandum opinion of the United States District Court for the Eastern District of Tennessee, Northern Division (R. 41) is not reported. The opinion of the United States Court of Appeals for the Sixth Circuit (R. 69) is reported at 189 F. 2d 494.

JURISDICTION

The judgment of the Court of Appeals was entered on May 14, 1951 (R. 69). The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether one claiming to be *in loco parentis* to an insured serviceman is a permissible beneficiary under Section 602(g) of the National Service Life Insurance Act where the relationship had its inception after the insured, who was neither physically nor mentally incapacitated, had reached his majority.

STATUTES INVOLVED

The pertinent provisions of the National Service Life Insurance Act of 1940, 54 Stat. 1008, as amended by the Act of July 11, 1942, 56 Stat. 657, and the Act of August 1, 1946, 60 Stat. 781, 38 U.S.C. 801, *et seq.*, read as follows:

Section 602(g):

> The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent, brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the

> classes herein provided: *Provided,* That the provisions of this subsection as to the restricted permitted class of beneficiaries shall not apply to any national service life insurance policy maturing on or after August 1, 1946.

Section 601(f):

> The terms "parent", "father", and "mother" include a father, mother, father through adoption, mother through adoption, persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year, and a stepparent, if designated as beneficiary by the insured.

STATEMENT

Respondent brought this action against the United States to secure the proceeds of a National Service Life Insurance policy taken out by Casper W. Hinds, which designated her as beneficiary, describing her as "(Aunt) Foster-Parent" (R. 64, 65). The Veterans Administration had denied her claim on the ground that she was not within the permissible class of beneficiaries under Section 602(g) of the National Service Life Insurance Act, *supra.*

Upon the denial of her claim by the Veterans Administration, respondent instituted this suit in the United States District Court for the Eastern District of Tennessee, as authorized by Section 617 of the Act (38 U.S.C. 817). At the trial, the facts

regarding the close relationship between respondent and the insured, which we do not here question, were brought out in detail (R. 70-72). For the purpose of this petition, it need only be noted that the relationship had its inception when the insured was 22 years of age (R. 6, 70). The District Court, applying the test apparently set forth by the court below in *Niewiadomski* v. *United States,* 159 F. 2d 683, 687, certiorari denied, 331 U. S. 850, that one could not stand *in loco parentis* to an adult, dismissed the action, holding that respondent did not stand *in loco parentis* to the insured and hence was not within the permissible class of beneficiaries under Section 602(g) of the Act (R. 42-43).

On appeal, the court below disavowed its prior dictum in the *Niewiadomski* case, *supra.* The court conceded that "it is a familiar rule of construction of statutes that where words and phrases have a well-known common law meaning, it will be presumed that they are used in the sense in which they were understood at common law." (R. 79). It concluded, however, that there never was any generally accepted common law meaning of the term *in loco parentis,* that the "natural and ordinary meaning" is to be given the term and that the statute is to be liberally construed to carry out the intention of the insured. Finding that, upon the evidence before it, respondent stood *in loco parentis* to the insured at the time of his death, even though the relationship did not have its in-

ception until after the latter reached maturity, it accordingly reversed the judgment of the district court and remanded the case for entry of judgment in respondent's favor. (R. 84-85.)

REASONS FOR GRANTING THE WRIT

1. The term *in loco parentis,* as it appears in Section 601(f) of the National Service Life Insurance Act, *supra,* has been employed by Congress since 1919 in various statutes pertaining to veterans' benefits. See, *e.g.,* Section 22 of the War Risk Insurance Act of 1917, 40 Stat. 398, 400-401, as amended by Section 4 of the Act of December 24, 1919, 41 Stat. 371; Section 607(c) of the World War Adjusted Compensation Act of 1924, 43 Stat. 121, 130, 38 U.S.C. 667(c); Section 3(5) of the World War Veterans Act of 1924, 43 Stat. 607, 38 U.S.C. 423(5); Section 8 of the Act of July 13, 1943, 57 Stat. 554, 556, which amended Veterans Regulation No. 10, 38 U.S.C., pp. 4277, 4278.[1] In

[1] The meaning of the term *in loco parentis* was pertinent under these Acts in relation to benefits other than insurance. Thus, the World War Adjusted Compensation Act provided for a bonus for each day of active service between April 5, 1917, and July 1, 1919 (see 38 U.S.C. 601, 661); the World War Veterans Act granted compensation for disability or death, resulting from injury or disease contracted in the military service (see 38 U.S.C. 471, 472); and Veterans Regulation No. 10 relates to the compensation and pension payments provided for by the Act of March 20, 1933, 48 Stat. 8, as amended, 38 U.S.C. 700 *et seq.,* C. 12 (see 38 U.S.C. 700, 725, 739, 741). It should be noted that Veterans Regulation No. 10 is also presently applicable to the compensation and pension benefits afforded veterans of World War II by the Act of December 19, 1941, 55 Stat. 844, and by Section 9(a) of the Act of July 13, 1943, 57 Stat. 556. (See also note 9, *infra,* p. 13.

administering the benefits afforded by those statutes, the Veterans Administration and its predecessors have for the past 31 years, consistently and uniformly construed the term *in loco parentis* as inapplicable to those persons whose alleged "parental" relationship to a serviceman had its inception after the serviceman, who was not physically or mentally incapacitated, reached his majority. The court below, in upsetting this long-established administrative practice, has thrown into doubt the validity of untold thousands of previously adjudicated claims for benefits probably running into millions of dollars,[2] and has decided a question of substantial present and future importance to the administration of the various veterans' benefit laws.

Although the permissible class of beneficiaries set forth in Section 602(g) of the Act was superseded by Section 4 of the Act of August 1, 1946, 60 Stat. 781, 38 U.S.C. 802(g), the interpretation of the term *in loco parentis* nevertheless involves a present, recurrent problem since Section 602(g) is fully applicable to all policies maturing before

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[2] As to payments made under the National Service Life Insurance Act. Section 602(l) (38 U.S.C. 802(l)) relieves the Veterans Administration of liability for the erroneous payment of benefits only where the payments were made to persons represented by the insured to be within the permitted class of beneficiaries, and does not do so where the claim of the designated beneficiary is denied and payments are made to others.

that date.[3] Further, as to such policies, similar questions are likely to arise under Section 602(h)(3)(C) of the Act, which provides that, upon the death of any beneficiary, the remaining installments of insurance, if there be no widow, widower, or child of the insured, shall be paid "to the parent or parents of the insured who last bore that relationship, if living, in equal shares" (38 U.S.C. 802(h)(3)(C)). Moreover, Section 3 of the Servicemen's Indemnity Act of 1951, P.L. 23, 82nd Cong., 1st sess.,[4] by its use of the term *in loco*

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[3] As amended in 1946, Section 602(g) permits, as to policies maturing after August, 1946, the designation of any beneficiary desired by the insured without restriction as to class.

[4] In pertinent part, the Servicemen's Indemnity Act of 1951, grants to "any person in the active service of the Army, Navy, Air Force, Marine Corps, Coast Guard," on and after June 27, 1950, automatic insurance "without cost to such person, against death in such service in the principal amount of $10,000." (Section 2). Section 3 provides that the indemnity is to be paid "only to the surviving spouse, child or children (including a stepchild, adopted child, or an illegitimate child if the latter was designated as beneficiary by the insured), parent (including a stepparent, parent by adoption, or person who stood in loco parentis to the insured at any time prior to entry into the active service for a period of not less than one year), brother, or sister of the insured, including those of the half-blood and those through adoption." Section 3 further states that the insured may designate the beneficiary or beneficiaries of the indemnity within those classes, designate the proportion of the principal to be paid to each, and change the beneficiary or beneficiaries without the consent thereof but only within the specified classes. It also provides that "If the designated beneficiary or beneficiaries do not survive the insured, or if none has been designated, the Administrator shall make payment of the indemnity to the first eligible class of beneficiaries according to the order set forth above, and in equal shares if the class is composed of more than one person."

parentis, presents the same continuing question of construction.

The decision below, while in accord with the decision of the Court of Appeals for the Seventh Circuit in *Zazove* v. *United States,* 156 F. 2d 24 (C.A. 7), is in conflict with the views expressed by the Court of Appeals for the Fifth Circuit in *Bland* v. *United States,* 185 F. 2d 395, 396 (C.A. 5). *Strauss* v. *United States,* 160 F. 2d 1017, 1019 (C.A. 2), certiorari denied, 331 U. S. 850. This conflict, unless resolved, is apt to produce inconsistent and inequitable results under the newly enacted Servicemen's Indemnity Act, *supra,* as well as the National Service Life Insurance Act. In view of the substantial importance of the question, and the conflict of views among the several courts of appeals, we respectfully ask the Court for an authoritative ruling.

2. The court below, upon its analysis of the cases, concluded that there never was any generally accepted common law definition of the term *in loco parentis* and held that the words are to be given their "natural and ordinary meaning." But even if it be assumed that the court's premise as to the lack of any precise common law definition of the term is correct,[5] it by no means follows that those

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[5] But see *e.g., Howard* v. *United States,* 2 F. 2d 170 (E.D. Ky.); *Estate of McCardle,* 95 Colo. 250, 35 P. 2d 850; *Vonder Horst* v. *Vonder Horst,* 41 Atl. 124 (C.A. Md.); *Brinkerhoff* v. *Merselis,* 24 N. J. Law 680; *Davis* v. *Gallagher,* 37 App. Div. 626, 55 N.Y.S. 1060, 46 C.J. (Parent & Child) pp. 1334-1337.

words should be given a loose, all-embracing construction. Although the term *in loco parentis* is not defined in any of the Acts in which it appears, we submit that Congress intended it to be construed strictly and in accordance with what the legislators considered to be its narrow legal sense.

The words *in loco parentis* first appeared in the War Risk Insurance Act of 1917, *supra,* as amended by Section 4 of the Act of December 24, 1919, 41 Stat. 371, and the congressional debate on that amendment reveals quite clearly the understanding of the participating members that the term *in loco parentis* was, for lawyers and judges, akin to a term of art.[6] Significantly, the illustrative cases of *in loco parentis* claims denied under

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[6] Thus, during the debate in the House of Representatives, Mr. Dewalt, one of the floor managers of the proposed amendment, stated that "the term 'loco parentis' is one which has a legal significance," and that to learn what the term means one could not examine the dictionary but "would have to examine the legal decisions." 58 Cong. Rec. 5090. Mr. Sweet, the sponsor of the proposed amendment, in answer to an inquiry as to the legal definition of the term, quoted the definition given in Bouvier's Law Dictionary. 58 Cong. Rec. 5104. Pursuing this line of inquiry, Mr. Rogers expressed the view that "it is fundamental that the strict legal definition of this phrase should be applied," and that "Congress should emphasize that it regards the phrase as meaning what the law writers and what the judges say it means not what popular usage may indicate." 58 Cong. Rec. 5104. Reading the decision of the Supreme Court of Maryland in the case of *Vonder Horst* v. *Vonder Horst*, 41 Atl. 124, 126, Mr. Rogers observed that the definition contained in that decision was more precise than the definition read by Mr. Sweet from Bouvier. He further stated that he could not "see how the language can be safeguarded," but pointed out that "we ought in the course of this debate to indicate that in the use of the phrase 'in loco parentis' we are using it in the strict legal sense and not in a loose, vague, and elusive sense, in which

the War Risk Insurance Act which Congress sought to correct by this amendment were situations wherein the alleged *in loco parentis* relationships had their inception while the serviceman was a minor. See 58 Cong. Rec. 5083, 5088, 5089, 5090, 5104, 5106, 5107-5108; Hearings before the Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 66th Cong., 1st sess., June 18th and 19th, 1919, pp. 20, 21, 60, 61, 82, 84, 85, 86, 90, 91, 93 97, 98, 99.

Shortly after the enactment of this amendment, the Bureau of War Risk Insurance construed the term *in loco parentis* as inapplicable to a relationship which has its inception after a serviceman, who is neither physically or mentally impaired, has passed his majority. See 8 Op. G. C. 1553, C. 86, 437, dated March 13, 1920; 8 Op. G. C. 2084, C. 91,094 dated April 2, 1920; 9 Op. G. C. 2453, C. 69, 904, dated April 16, 1920; 9 Op. G. C. 2851, C. 109, 732, dated April 30, 1920. And see 1 Decisions of the Administrator of Veterans' Affairs, p. 851, Decision No. 536, October 22, 1943. This administrative construction was rejected in *Meisner* v. *United States,* 295 Fed. 866 (W.D. Mo.), but was subsequently upheld in *Howard* v. *United States,* 2 F. 2d 170 (E.D. Ky.) and in *Tudor* v. *United States,* 36 F. 2d 386 (W.D. Wash.),

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perhaps it would be used in ordinary conversation." 58 Cong. Rec. 5104. Following this discussion, a proposed amendment to insert the phrase "or as foster parent" after the word "parentis" was rejected. 58 Cong. Rec. 5104-5105.

appeal dismissed by stipulation, 38 F. 2d 1020 (C.A. 9). Even if it stood alone, this contemporaneous construction of the War Risk Insurance Act would not "be overturned unless clearly wrong, or unless a different construction is plainly required." *United States* v. *Citizens Loan & Trust Co.*, 316 U. S. 209, 214; cf. *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 549; *United States* v. *Madigan*, 300 U. S. 500, 505; *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 315.[7] *A fortiori*, such administrative construction should be accepted where Congress repeatedly employed the identical term in subsequent enactments, particularly where the weight of then prevailing judicial decision was in accord with that construction. Cf. *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 275-276; *National Lead Co.* v. *United States*, 252 U. S. 140, 146; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 488-489.

The conclusion that Congress intended to adopt this consistent construction is substantiated by the history of the 1946 amendment to the National Service Life Insurance Act, which broadened the definition of "parent" in Section 601(f) to include

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[7] Section 608 of the National Service Life Insurance Act (38 U.S.C. 808) charges the Administrator of Veterans' Affairs with the administration, execution, and enforcement of the Act and empowers him to "make such rules and regulations not inconsistent with the provisions of this Act, as are necessary or appropriate to carry out its purposes." See also Sec. 13 of the War Risk Insurance Act, *supra;* Sec. 306 of the World War Adjusted Compensation Act, *supra;* Sec. 5 of the World War Veterans Act, *supra.*

"a stepparent, if designated as beneficiary by the insured." (60 Stat. 781).[8] In interpreting the National Service Life Insurance Act, as passed in 1940, the Veterans Administration had held that a stepparent is not a permissible beneficiary under Section 602(g) unless *in loco parentis* to the insured for at least one year prior to the insured's entry into active service, and that a stepparent could not stand *in loco parentis* to the insured where the insured had attained his majority prior to the stepparent's marriage. See 1 Decisions of the Administrator of Veterans' Affairs, p. 851, Decision No. 536, October 22, 1943. Apparently aware of this and similar decisions by the Veterans Administration, Congress thereupon enlarged the term "parent" to include "stepparent" but did not reject the Veterans Administration's view that an *in loco parentis* relationship must have its inception prior to the majority of the insured. See

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[8] In view of the peculiar legislative history of the National Service Life Insurance Act of 1940 there are no contemporary congressional statements explaining the purpose and scope of Sections 601(f) and 602(g). The National Service Life Insurance Act of 1940 formed a part of the Second Revenue Act of 1940 and was added to it in the Conference Committee. 86 Cong. Rec. 12962-12963. There was little debate in either house on the insurance portions of the bill when the Conference Report was brought up. 86 Cong. Rec. 12916-12925, 12945-12970. However, in the Senate, Senator Harrison, who was in charge of the Bill, pointed out that National Service Life Insurance was "similar to war risk insurance with certain modifications based on experience gained over the past 20 years." 86 Cong. Rec. 12920. And it seems that Congress was aware that the term *in loco parentis* also appeared in earlier acts. Cf. S. Rep. No. 403, 78th Cong., 1st Sess., p. 9.

H. Rep. No. 2002, 79th Cong., 2d Sess., p. 2; S. Rep. No. 1705, 79th Cong., 2d Sess., p. 2.[9]

Moreover, the National Service Life Insurance Act, on its face, supports the administrative construction. Far from being loosely drawn with respect to the designable beneficiaries, the Act contains a detailed and specific enumeration of each permissible beneficiary and enlarges the scope of possible beneficiaries wherever the common law meaning of the word used would be unduly restrictive. Thus, Section 602(g), as originally enacted, provided that the insurance shall be payable only to a widow, widower, child, parent, brother or sister of the insured. It specifically provided, however, that the term "child" includes "a stepchild or an illegitimate child if designated as a beneficiary by the insured," and that the term "parent" includes a "person in loco parentis if designated as beneficiary by the insured." Section 601(e) further defined the term "child" to include "an adopted child." As amended in 1942, 56 Stat. 657, 659, the term "parent" was broadened to "include a father, mother, father through adoption,

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[9] In addition to the Acts previously cited *supra*, pp. 5, 7, see also Sec. 4 of the Pay Readjustment Act of 1942, 56 Stat. 359, 361, as amended by the Act of November 24, 1945, 59 Stat. 587, 37 U.S.C. (1946 ed.) 104, and Section 102(g) of the Career Compensation Act of 1949, 63 Stat. 804, 805, 37 U.S.C. (Supp. IV) 232, which superseded that Act and specifically provided that the *in loco parentis* relationship must have existed for "a continuous period of not less than five years during the *minority* of such member." (Emphasis added.) Cf. 26 Comp. Gen. 778.

mother through adoption." At the same time, however, the class of beneficiaries *in loco parentis* was restricted to those "persons who have stood in loco parentis to a member of the military or naval forces prior to entry into active service for a period of not less than one year." Finally, in 1946, the term "parent" was extended to include "a stepparent, if designated as beneficiary by the insured." In view of such detailed enumeration, it is likely that Congress intended the term *in loco parentis* to be strictly construed. And numerous lower federal courts have so ruled. See *Strauss* v. *United States, supra; Bland* v. *United States, supra; Lyerly* v. *United States,* 162 F. 2d 79, 85, 86 (C.A. 10); *Reynolds* v. *United States,* 96 F. Supp. 257, 261 (D. Kan.); *Powledge* v. *United States,* 88 F. Supp. 561 (N. D. Ga.); *Bourbeau* v. *United States,* 76 F. Supp. 778, 779 (D. Me.); *Tudor* v. *United States, supra; Howard* v. *United States, supra.*

We submit, therefore, that the court below erred in construing the term *in loco parentis* in contravention of a long established administrative practice which accords with the language and history of the statute. To depart from that administrative construction, and to adopt a loose, undefined construction based on the "natural and ordinary meaning" of these words, as the court below did, is to leave the courts bereft of any "chart or compass to guide them except the sympathies or views

of each individual judge on the facts of each case. If an insured may, by denominating persons as in loco parentis to himself, thereby make them so, then the repeatedly manifested intent of Congress through the years to confine beneficiaries to those related by blood, marriage or adoption (formal or informal) would be destroyed." *Powledge* v. *United States, supra,* at 564.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

AUGUST, 1951.

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